FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

NO. 824

ADA J. VANT and WALTER J. VANT, Petitioners,

v.

THE MUTUAL BENEFIT LIFE INSURANCE COMPANY, a corporation, Respondent.

PETITION FOR REHEARING

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petition of Ada J. Vant and Walter J. Vant respectfully represents:

First: On May 25, 1959, this Honorable Court denied the petition for writ of certiorari in the above entitled case. The petition sought review of judgments which deprived petitioners of their right to due process of law, in conflict with the Law of the Land, which judgments constitute such departures from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. Incidentally involved was the right of petitioners to merge their life and remainder interests in an Interest Income Certificate and receive outright payment, but they never were able to obtain a legal adjudication of that issue because of the lower Courts' misapplications

of the Federal Rules of Civil Procedure and the applicable law.

Second: On May 18, 1959, the opinions of this Honorable Court were entered at No. 58 October Term, 1958, in the case of *Dick, Petitioner v. New York Life Insurance Co.* Mr. Chief Justice Warren delivered the opinion of the Court, and Mr. Justice Frankfurter the dissenting opinion. For purposes herein, it does not matter which opinion is the correct one in that case because both opinions support petitioners' right to certiorari in this case. It is respectfully submitted that one point raised in the dissenting opinion may (upon consideration out of context) have erroneously influenced the denial of certiorari herein one week later, because Mr. Justice Frankfurter was so vigorous in his position sanctioning the Evarts Act, that this Court should not adjudicate "cases that are important only to the litigants", and concurring with Mr. Chief Justice Taft explaining the "Judges' Bill" saying, "No litigant is entitled to more than two chances, namely to the original trial and to a review" by the Court of Appeals. It is obvious from the Record that neither one of those points is applicable to the instant petition; and that, on the contrary, it is the authorities cited in support of granting certiorari that should be considered on rehearing in this case.

Third: In the first place, the importance to the litigants of this case is incidental and subordinate to the importance to the public. Of primary importance is the right to litigate with due process of law; to be heard in advance of judgment; to the protection of the Federal Rules of Civil Procedure from Judges who whimsically and capriciously refuse to be bound thereby; to an ad-

judication of all points and issues; and to have the applicable law considered and upheld. If your petitioners would have been allowed these rights by the Judges below, then they could have obtained their right to immediate payment of their money from respondent, and there would not have been any need for *resort* to this Court. But the denial of all of these rights by the Judges below is so obvious of record, that in this case your Honorable Court is really one of *first resort* rather than *last resort*. Judging from the cases which counsel for your petitioners alone has lodged in this Court from the Third and other Circuits, it is readily apparent that the right of appeal is too often a sham and illusory; and this is undoubtedly the reason for this Court's supervisory power, an important substitute for the second resort. In the second place, therefore, if litigants do not get the two chances to which they admittedly are entitled before coming into this Court, then a fastidious regard for the honor of the fair administration of justice requires that this Court afford the second chance. Such assurance of a second chance, coupled with a real enforcement of this Court's supervisory power, is the surest way of reducing the overflow of petitions for certiorari, because the excessive flow of petitions into this Court should be blamed upon the Judges, not the litigants. Judges of Courts of Appeals have become so confident that they can discriminatorily dispense "justice" in whatever way they please, without fear of review, that litigants too often are really denied their second chance and are impelled to seek it in this Court. A review by this Court in such cases would indeed obviate the need for lawyers' hoping "to draw a prize in the lottery."

Fourth: **Because of a "weakness" in the Evarts Act, this Court was given discretionary power to grant certiorari; and Mr. Justice Frankfurter stated that it was held the certiorari power should be exercised "to secure uniformity of decision". Does not the security of uniformity of decision require the grant of certiorari in this case? Is there any uniformity in decisions holding**

that a judgment can be based on the law of New York and Indiana, when Pennsylvania law should be applied;

that a District Court can overrule a Court of Appeals;

that a Complaint can be defended by a motion to strike, when the Rules require an Answer or a Motion to Dismiss;

that a mandate from the Court of Appeals prevents further proceedings in the District Court pursuant to the Federal Rules of Civil Procedure and applicable law, even as to matters not within the compass of the mandate;

that a litigant cannot have his right to amend once under Rule 15(a);

that Courts can enter summary dismissals, in advance of the right to be heard, without adjudicating the issues and discussing authorities, and even without entering any Opinions at all?

Fifth: It is respectfuly submitted that when the certiorari power should be exercised to secure uniformity of decision, as in the instant case, it should not be denied because the case is incidentally important to the litigants.

Sixth: Even Mr. Chief Justice Taft, after saying that no litigant is entitled to more than two chances, went on to say the Supreme Court's function "is to preserve uniformity of decision among the intermediate courts of appeal". **Therefore, according to both the Evarts Act and the "Judges' Bill", certiorari should be granted in this case.**

Seventh: The *Erie* rule is the most compelling ground for granting certiorari in this case. When Circuit Judge Hastie rendered his opinion on the simple trust theory, he based it upon a New York State case (App. 4) and an Indiana State case (App. 5). The jurist then went on to opine that, "Whether or not Pennsylvania would adopt this view in an appropriate case we do not attempt to say" (App. 6). **It is obvious from the foregoing that, in a Pennsylvania case, Judge Hastie applied inapplicable law from two other States, and admittedly did not apply Pennsylvania law because (as he said) he did not know what it was.** Under *Erie R. Co. v. Tompkins*, 304 U. S. 64, Judge Hastie was required to apply Pennsylvania law in this case.

Eighth: Promptly after the entry of Judge Hastie's Opinion, your petitioners presented a Petition for Rehearing, submitting Pennsylvania authorities fully supporting their right as life tenant and remainderman to waive the trust, "merge their interests" and "obtain at their pleasure" the corpus outright; and, unlike Judge Hastie's citations, their authorities are pertinent to the issue *without* dispute and are entirely directly in point. In Philadelphia as far back as *In Re Henderson's Estate*, 15 Phila. 598, 39 L. I. 450, the Orphans' Court held analogously that although it is an active trust, yet it

may be terminated before the prescribed time at the request of the *cestuis qui trustent* who are *sui juris;* and that they have the right, as beneficial owners of the entire estate, to waive the trust and obtain the payment of the money divested of the trust. In *Sharpless's Estate, Mendenhall's Appeal,* 151 Pa. 214, the Pennsylvania Supreme Court upheld the law of *Yerkes's Appeal,* 2 Chester Co. Reports, 410, that (applied to the instant case) the chief object of the trustor was to preserve the corpus for his son, and that the son's conveyance of the remainder to his mother who was entitled to the income vested it in her, with the result that no valid reason appeared for the continuance of the trust. *Mendenhall's Appeal, supra,* is cited and followed in *Owens' Estate,* 15 Pa. Co. Ct. Reports, 196, which squarely supports appellants' position by holding that the merger of the life estate with the remainder executes the trust and the life tenant who purchased the remainder became entitled absolutely. In view of the foregoing, it is respectfully submitted that plaintiffs' complaint is supported by the rule of law in Pennsylvania.

Ninth: Did your petitioners ever have a chance? Their first "chances" were before District Judge Herbert P. Sorg who did not accompany his Orders with legal opinions because he could not. Their second "chances" were before the Court of Appeals that failed to adjudicate a single issue before it. Your petitioners now seek of this Honorable Court, in the interests of justice, a chance.

Tenth: This Honorable Court is invited to make a simple test of the reliability of the Court of Appeals by comparing its Opinions (App. 1-6) with the Record, to

see if the case and its issues can be recognized therefrom; then to compare its judgments with the issues to see if there has ever been an adjudication of a single issue properly before the Court. That is the most effective way in which this Honorable Court can ascertain that your petitioners have never had a chance.

Wherefore, your petitioners pray that this Honorable Court grant a rehearing.

PAUL GINSBURG,
Counsel for Petitioners.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay; and that it is restricted to the grounds specified in paragraph 2 of Rule 58.

PAUL GINSBURG,
Counsel for Petitioners.
